

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
No. 5:20-CT-3172-D

TERRENCE JAVARR ROSS,

Plaintiff,

v.

KENNETH E. LASSITER, et al.,

Defendants.

ORDER

On May 14, 2020, Terrence Javarr Ross (“Ross” or “plaintiff”), a state inmate proceeding pro se and in forma pauperis, filed a complaint under 42 U.S.C. § 1983 [D.E. 1, 2, 9]. On March 1, 2021, the court conducted a frivolity review of Ross’s complaint and allowed the action to proceed [D.E. 13]. On August 26, 2021, the clerk granted all defendants an extension of time until September 27, 2021 to answer or otherwise respond to the complaint [D.E. 36]. On September 27, 2021, all defendants answered the complaint [D.E. 38]. Ross moves for entry of default against defendants Matthew Strickland (“M. Strickland”) and Kenneth E. Lassiter (“Lassiter”) [D.E. 28], and for leave to supplement the complaint [D.E. 41].


As for Ross’s motion for leave to supplement the complaint, a party may amend his pleading once as a matter of course within 21 days after service, or, if it is a pleading requiring a response, within 21 days after service of the response or service of a motion under Rule 12(b), (e), or (f). See Fed. R. Civ. P. 15(a)(1). Otherwise, a party may amend his pleading only with the written consent of the opposing party or leave of court. See Fed. R. Civ. P. 15(a)(2). Ross alleges that on September 26, 2021, while incarcerated at Southern Correctional Institution (“Southern CI”), prison staff moved him to an upper tier cell in violation of his Eighth Amendment rights. See [D.E. 41] 4–7. Ross

contends that he cannot climb stairs because of his medical condition and that the location of his new cell is a fire hazard. See id. Ross's proposed claims against new defendants at Southern CI arose after he commenced this action. See, e.g., Fed. R. Civ. P. 20(a)(2); George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007); Coughlin v. Rogers, 130 F.3d 1348, 1350–51 (9th Cir.1997). Moreover, the events of Ross's proposed claims occurred in Montgomery County, which is located in the Middle District of North Carolina. See 28 U.S.C. § 113(b). Thus, the court denies the motion for leave to supplement the complaint as futile. Ross may pursue these claims in a new action in the Middle District of North Carolina.

As for Ross's motion for entry of default against defendants M. Strickland and Lassiter, the court denies the motion because defendants' answer was timely. See [D.E. 36, 38].

In sum, the court DENIES Ross's motions for entry of default [D.E. 28] and for leave to supplement the complaint [D.E. 41].

SO ORDERED. This 21 day of December, 2021.



JAMES C. DEVER III
United States District Judge